BLANK

PAGE

BLANK

PAGE

INDEX

CITATIONS

Cases:	Page
Bemis Bros. Bag Co. v. *United States*, 289 U. S. 28	2
Factors & Finance Co. v. *United States*, 56 F. (2d) 902, affirmed on other grounds, *United States* v. *Factors & Finance Co.*, 288 U. S. 89	2
Lewis v. *Reynolds*, 284 U. S. 281	3, 5
United States v. *Henry Prentiss & Co.*, 288 U. S. 73	4
United States v. *Memphis Cotton Oil Co.*, 288 U. S. 62	2, 3, 4, 5
Miscellaneous:	
Treasury Decision 4265	6

31869—37

BLANK

PAGE

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 48

THE UNITED STATES, PETITIONER

v.

MABEL S. ANDREWS, EXECUTRIX OF THE ESTATE OF MATTHEW ANDREWS, DECEASED

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

REPLY BRIEF FOR THE UNITED STATES

The brief of an *amicus curiae* now presents for the first time in this case the argument that the cause of action in a suit or refund claim to recover taxes is simply overpayment of the tax for the year in question and, therefore, the late specific claim is allowable as an amendment of the timely unrelated specific claim because it does not change the cause of action.

The Government submits that this contention ignores entirely the statutory and administrative system of regulation of refund claims which re-

quires a timely presentation of specific grounds for refund. If this broad contention, suggested by the discussion of amendments of general claims in the opinion of the Court of Claims in *Factors & Finance Co.* v. *United States,* 56 F. (2d) 902, were correct, this Court, affirming that decision on other grounds, *United States* v. *Factors & Finance Co.,* 288 U. S. 89, would have had no occasion to remark at page 94 that the "case is a close one" and that case, as well as *United States* v. *Memphis Cotton Oil Co.,* 288 U. S. 62, and *Bemis Bros. Bag Co.* v. *United States,* 289 U. S. 28, might have been decided without extended discussion simply on the ground that any timely claim, specific or general, may be amended at any time before rejection by a late unrelated specific claim because the "cause of action" was not changed. The analogy to amendments of pleadings and the rule against changing a cause of action after expiration of the period of limitations cannot be applied to defeat the requirement for timely specific claims.

Furthermore, the Government submits, the cause of action involved here is not overpayment generally, but overpayment of a particular amount on the specific ground of worthlessness of the stock of two corporations during the tax year, and that the late claim states a new cause of action for a different and greater amount on the unrelated ground of gain from sale of stock of a third cor-

poration.[1] In *United States* v. *Memphis Cotton Oil Co.*, 288 U. S. 62, 67–69, this Court reviewed its own decisions discussing the nature of a cause of action for purposes of a late amendment of a complaint in cases not involving taxes and indicated that the general rule for pleadings aided determination of the allowable late amendments to refund claims. This Court then stated at page 69:

> The choice between these meanings [of the identity of a cause of action, i. e., mere fact of overpayment or particular grounds] must avoid a doctrinaire adherence to abstract definitions. It must keep in view the realities of administrative practice, for its effect will be to regulate the conduct of administrative officers.

The Government contends that both the analogy to pleadings and the realities of administrative practice indicate that a new cause of action was set up by the late claim in the present case.

1. It seems clear that generally, and apart from their relation to a tax refund in this case, the group of operative facts constituting the specific ground

[1] The statement in the lower court's opinion in *Lewis* v. *Reynolds*, 48 F. (2d) 515, 516 (C. C. A. 10th), quoted by this Court, 284 U. S. 281, 283, and repeated in *United States* v. *Memphis Cotton Oil Co.*, 288 U. S. 62, 70, to the effect that the question presented by a refund claim is whether the tax for the year has been overpaid, was used, not for the purpose which the *amicus curiae* now uses it to determine allowable amendments to refund claims, but for the entirely different purpose to determine the extent to which offsets might be applied against allowable refund claims.

of the untimely claim in the present case could not be substituted in a complaint for the facts constituting the ground of the timely claim after the period of limitations had expired. Cf. *United States* v. *Memphis Cotton Oil Co.*, 288 U. S. 62, 67–69, and cases therein discussed.[2]

2. The administrative practice does not support the contention that a specific claim, like a general claim, may be amended by a late unrelated specific claim. A general claim may be rejected promptly for failure to set forth specific grounds and in this manner the Commissioner may insist upon observance of the regulations which require a timely assertion of specific grounds. *United States* v. *Henry Prentiss & Co.*, 288 U. S. 73, 94; *United States* v. *Memphis Cotton Oil Co.*, 288 U. S. 62, 71. The Commissioner must retain and determine a specific claim on the merits and the only method available for insisting upon a timely assertion of other unrelated specific grounds is by rejecting late claims as in the present case.

When a specific refund claim is filed it may present only a legal contention which can be determined without an audit or any examination of

[2] For example, if the respondent in one transaction had purchased the stock involved in the first and second claims from the same person, induced by actionable misrepresentations of value, a complaint stating a cause of action relying only on the purchase of the stock involved in the first claim could not be changed by a late amendment into a cause of action based on the purchase of the stock involved in the second claim.

facts. If the claim may be denied as a matter of law, there is no need to look for offsets. But if the claim is allowable as a matter of law, or if an audit is necessary to determine the validity of the claim, it is the prevailing administrative practice either to make an audit or to consider a prior audit made before the refund claim was filed, or to make a reaudit to determine the validity of the specific claim and to determine whether any offsets exist. *United States* v. *Memphis Cotton Oil Co.*, 288 U. S. 62, 70; *Lewis* v. *Reynolds*, 284 U. S. 281, 283.

It is not the purpose of that audit to uncover other specific grounds for refund not relied upon by the taxpayer. Of course, if a new ground is disclosed, the Commissioner will grant a refund, within the period of limitations, even without a refund claim. The consequences of the contention that every specific claim tolls the statute of limitations until rejection might seriously impede administration of the tax laws and certainly would restrict the operation of the public policy embodied in the statute of limitations in favor of a reasonable termination of tax litigation.[3]

[3] For example, under the contention of the *amicus curiae*, although a specific refund claim filed just before expiration of the period of limitations might require a long examination by the Commissioner, the taxpayer might assert any late unrelated specific claim which might occur to him or which intervening court decisions might suggest at any time before rejection of the timely claim. Logically, that second claim would in turn extend the statute until it was rejected and would permit further claims.

Finally, Treasury Decision 4265, and the succeeding similar regulations, embody the result of a long administrative experience in the regulation of refund claims under which it has been determined that every specific ground relied upon shall be presented in a timely claim. This regulation, adopted to facilitate administration of federal income taxes, should be enforced.

CONCLUSION

For the foregoing reasons and the reasons stated in the first brief for the United States the judgment of the court below should be reversed.

Respectfully submitted.

STANLEY REED,
Solicitor General.
JAMES W. MORRIS,
Assistant Attorney General.
SEWALL KEY,
NORMAN D. KELLER,
Special Assistants to the Attorney General.
EDWARD J. ENNIS,
Attorney.

DECEMBER 1937.

U. S. GOVERNMENT PRINTING OFFICE: 1937

BLANK

PAGE